IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.217 OF 2004

Ashok Leyland Finance ltd. ... Petitioners

v/s

Mr Omer M. Ansari and anr. ... Respondents

Ms Shakuntala Joshi for Petitioners.

Ms Bhandari i/b Ms Suman Jain for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 17TH AUGUST 2004

P.C.: -

1. This is a petition filed under section of the Arbitration and Conciliation Act 1996. There is an objection raised by the respondents to the maintainability of the petition. According to the provisions of the said Act, it is only that Court before which a suit would have been filed, can entertain a petition under section 9 of the said Act. So far as the present petition is concerned, admittedly the agreement, which is the subject matter, is entered into at Pune. The other aspect for the purpose of cause of action to be considered is the breach of contract. The breach of contract in such cases would be at the place where payment was to be made. The contract itself does not specify any place where payment can be made. The respondents were carrying on business in Bombay, their business has been shifted to Pune. The case of the respondents is that they were making payment in Pune. The learned counsel appearing for petitioners, however, relies on a judgment of the learned Single Judge of this Court in the case of Kotak Mahindra Finance Ltd. v/s Parasrampuria Synthetics Ltd., reported in 1998(4) Bom.C.R. 731. Perusal of the judgment shows that in

that case, there was a clause in the agreement itself that the payment was to be made in Bombay. Obviously therefore, if there is failure to make payment, there will be breach of contract and as the payment was to be made in Bombay, the breach of contract would occur in Bombay and therefore, cause of action partly arises in Bombay and this Court had jurisdiction to entertain this petition.

2. The learned counsel appearing for petitioners relies on a judgment in the case of New Moga Transport Co. v/s United India Insurance Co.Ltd. and others, reported in (2004) 4 SCC 677. In that judgment, the Supreme Court has considered the provisions of section 20 of the C.P.C. However, in this case, what is to be considered is whether the petitioners would have been entitled to institute a suit on the Original Side of this Court. In so far as the Original Side of this Court is concerned, the C.P.C. has excluded operation of section 20 of the C.P.C. to the Original Side of this Court and the territorial jurisdiction of the Original Side of the Bombay High Court is to be considered in accordance with the provisions of clause 12 of the Letter Patent and not section 20. So far as the judgment of the Supreme Court in the case of South East Asia Shipping Co.Ltd. v/s Nav Bharat Enterprises

Pvt.Ltd. and others, reported in (1996) 3 SCC 443 is concerned, that judgment also deals with section 20. So far as the judgment of the Supreme Court in the case of A.B.C. Laminart Pvt.Ltd. and anr. v/s A.P. Agencies, Salem, reported in (1989) 2 SCC 163 is concerned, there also the Supreme Court defines the term 'cause of action. It is now settled law that cause of action arises in relation to a suit which is instituted for breach of contract at the place where contract is entered into as also at the place where the breach is committed. In the present case, neither the contract is entered into in Bombay i.e. within territorial jurisdiction of this Court nor breach is occurred in Bombay. In this view of the matter therefore, the present petition is not maintainable in this Court.

Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.